

**SUPERIOR COURT
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0669

Submitted: November 16, 2005

Decided: February 28, 2006

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Re: State v. Thomas LeGrande, ID# 0501015557
*Upon Defendant's Motion for a New Trial – **GRANTED***

Dear Counsel:

After a jury convicted Defendant of several, serious weapons and drug charges on October 26, 2005, Defendant filed a timely motion for a new trial.

When Defendant testified, his counsel asked Defendant to reveal prior convictions for attempted murder and related charges. After the verdict was returned, Defendant's counsel realized that the prior felonies had occurred in 1974. Thus, they were too remote to be admissible as impeachment.¹ But for defense counsel's having asked about them, the jury would not have learned of them.

¹ D.R.E. 609(b).

Therefore, under Superior Court Criminal Rule 33, Defendant asks for a new trial in the interest of justice. According to Defendant, “given the nature of the instant charges and the nature of the prior convictions his [counsel’s] error was in fact harmful and prevented the defendant from the benefit of a fair trial.”

In response to the court’s request, the State filed timely opposition to Defendant’s motion. The State concedes, and the court agrees, that this was an “honest mistake.” In other words, there is no suggestion that this was a ploy by defense counsel, intended to undermine the verdict. Nevertheless, the State argues that the reference to the prior convictions “was deftly downplayed by counsel for the defendant and the State never addressed the offenses.” Moreover, the State’s evidence was overwhelming. Therefore, according to the State, the error was harmless.

The court agrees that the State’s case was powerful. The police found drugs, drug paraphernalia and assorted weapons in the one-room apartment occupied by Defendant. It is difficult to understand how, at the least, Defendant was not aware of the contraband and how it was also not under his control. The only evidence on Defendant’s side was his testimony that the contraband was not his. Thus, the defense turned on Defendant’s word. That, however, is Defendant’s point here.

Meanwhile, due to the verdict, Defendant is facing at least fifteen years of minimum/mandatory prison. Therefore, if the mistake were not harmless, its consequences are profound. In considering whether the mistake was harmless, the court must take into account the indicted charges, which involved weapons offenses, and the impeachment, which involved very serious, violent felonies. And while the State did not harp on the impeachment, the court instructed the jury on Defendant’s conviction of a felony. There is little doubt, therefore, that the impeachment evidence was not lost on the jury. Finally, Defendant’s trial was short, lasting less than two days. Accordingly, the impeachment evidence probably took on even greater significance.

The court is reluctant to overturn a jury’s verdict, especially based on

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defense counsel's admission of error.² If any fact were different, the outcome here might also be different. If, for example, Defendant were not facing so much mandatory prison, if the improper impeachment did not involve violence, if the new charges did not involve weapons, if the trial had been longer, and so on, the result might be different. But taking everything into consideration, including the relative ease with which Defendant can be given a new trial, the court is satisfied that a new trial is warranted in the interest of justice.³

For the foregoing reasons, Defendant's motion for a new trial is **GRANTED. FURTHERMORE**, the Office of the Public Defender is relieved. The court will appoint new counsel. Because the court views this as an isolated incident, no further action will be taken.

IT IS SO ORDERED.

Very truly yours,

FSS/lah

oc: Prothonotary (Criminal Division)

² Compare *State v. Hamilton*, Del. Super., ID No. 92011967, Toliver, J. (Dec. 18, 1997)(ORDER); *State v. Bailey*, 1991 WL 190294 Del. Super.

³ *Holtzman v. State*, 718, A.2d 528 (Del. 1998).

bxc: Judge Jurden for appointment of conflict counsel.

